

**Letters of Findings Number: 02-20130199P**  
**Corporate Income Tax**  
**For the 2011 Tax Year**

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**ISSUE**

**I. Tax Administration –Ten Percent Penalty: Underpayment of Tax.**

**Authority:** IC § 6-8.1-5-1; IC § 6-8.1-6-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent penalty for underpayment of tax.

**STATEMENT OF FACTS**

Taxpayer is a corporation doing business in Indiana. The Indiana Department of State Revenue ("Department") assessed Taxpayer a ten percent penalty for underpayment of tax by the original due date of Taxpayer's 2011 corporate income tax return. Taxpayer timely protested the assessment of penalty, and this Letter of Findings ensues. Additional facts will be provided as needed.

**I. Tax Administration –Ten Percent Penalty: Underpayment of Tax.**

**DISCUSSION**

The Department imposed a ten percent penalty on Taxpayer because the Department found that Taxpayer – having filed its 2011 corporate income tax return– failed to remit ninety percent of the full amount of corporate income tax on or before the original due date for payment. Thus, the Department imposed a ten percent payment penalty under IC § 6-8.1-10-2.1(a)(2) for the amount of tax that was paid after the original due date of the return. Taxpayer protests the imposition of the penalty for its underpayment of tax.

IC § 6-8.1-6-1(c) provides:

(c) If the Internal Revenue Service allows a person an extension on his federal income tax return, the corresponding due dates for the person's Indiana income tax returns are automatically extended for the same period as the federal extension, plus thirty (30) days. However, the person must pay at least ninety percent (90 [percent]) of the Indiana income tax that is reasonably expected to be due on the original due date by that due date, or he may be subject to the penalties imposed for failure to pay the tax.  
(Emphasis added).

Under IC § 6-8.1-10-2.1, penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1 further provides, in relevant part:

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

The Department also notes that [45 IAC 15-11-2](#) further states, in relevant part:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has provided sufficient information to establish that its failure to pay ninety percent of the tax due by the original 2011 return due date was not due to Taxpayer's negligence, but was due to reasonable cause as required by [45 IAC 15-11-2\(c\)](#). Therefore, the assessment of the ten percent penalty is waived.

**FINDING**

Taxpayer's protest of the imposition of penalty is sustained.

*Posted: 06/26/2013 by Legislative Services Agency*

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